

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.

No. CR-94-284-FVS

ORDER

DARRYL E. JACKSON,  
  
Defendant.

**THIS MATTER** comes before the Court for consideration of the defendant's motion to vacate. For the reasons set forth below, it is denied.

**BACKGROUND**

On June 28, 1995, judgment was entered against the defendant. The Ninth Circuit affirmed on May 28, 1996. *United States v. Jackson*, 84 F.3d 1154, 1161 (9th Cir.), *cert. denied*, 519 U.S. 986, 117 S.Ct. 445, 136 L.Ed.2d 341 (1996). Since then, the defendant has applied for post-conviction relief on several occasions. Initially, he filed a motion to vacate pursuant to 28 U.S.C. § 2255. The Court denied this motion on November 17, 1997. On May 15, 1998, the Ninth Circuit denied the defendant's request for a certificate of appealability. On February 8, 1999, he filed a motion pursuant to Federal Rule of Civil Procedure 60(b) asking the Court to vacate its order of November 17, 1997. The Court construed this motion as a

1 second § 2255 motion and, on February 16, 1999, stayed action on the  
2 motion so the defendant could apply to the Ninth Circuit for a  
3 certificate authorizing this Court to consider his motion. At some  
4 point thereafter, the defendant filed a petition with the circuit  
5 court seeking a writ of mandamus. On May 27, 1999, the Ninth Circuit  
6 denied his petition for a writ of mandamus. On June 21, 1999, the  
7 defendant filed a notice of appeal seeking review of this Court's  
8 order of February 16, 1999. On February 1, 2000, the Ninth Circuit  
9 denied his request for a certificate of appealability. On April 25,  
10 2002, the defendant filed another Rule 60(b) motion. The Court  
11 construed this motion as a § 2255 motion, and, on May 1, 2002, denied  
12 it. On March 3, 2003, the Ninth Circuit denied his request for a  
13 certificate of appealability. On May 7, 2004, he filed a petition in  
14 the Central District of California seeking a writ of habeas corpus  
15 pursuant to 28 U.S.C. § 2241. A District Judge ruled that his habeas  
16 petition was, in fact, a § 2255 motion; that he had not demonstrated  
17 the remedy provided by § 2255 is inadequate or ineffective; and that  
18 his request for collateral relief had to be decided by the sentencing  
19 court. Accordingly, the Judge transferred the matter this District.  
20 On July 30, 2004, this Court refused to consider the defendant's  
21 request because it was a second or successive § 2255 motion and the  
22 defendant had not obtained an order from the Ninth Circuit  
23 authorizing this Court to consider his motion. 28 U.S.C. §  
24 2244(b)(3). The defendant filed a notice of appeal, but the Court  
25 refused to issue a Certificate of Appealability. On October 29,  
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1 2004, the Ninth Circuit upheld this ruling. Eight months elapsed.  
2 On July 14, 2005, the defendant filed another habeas petition in the  
3 Central District of California challenging the validity of the  
4 judgment entered against him in this District. The 2005 petition  
5 raises essentially the same issues as the 2004 petition. Indeed, the  
6 supporting memoranda filed by the defendant are very similar. On  
7 August 26, 2005, a Magistrate Judge in the Central District  
8 transferred the matter to this District. On September 6, 2005, the  
9 defendant filed a paper entitled "Notice of Petition for Writ of  
10 Mandamus." He asks this Court to command the Magistrate Judge in the  
11 Central District of California to rescind his order transferring the  
12 defendant's motion to this District.

#### 13 **RULING**

14 The defendant claims he is innocent of the crime of which he has  
15 been convicted. Although, in certain circumstances, a person may  
16 assert a claim of actual innocence under § 2241, *see Ivy v. Pontesso*,  
17 328 F.3d 1057, 1059-60 (9th Cir.2003), the defendant may not do so  
18 because he has failed to demonstrate both that he is legally innocent  
19 of the crime of which he has been convicted and that he never has had  
20 an unobstructed procedural shot at presenting this claim. *See id.* at  
21 1060 (internal punctuation and citations omitted). That being the  
22 case, the Magistrate Judge in the Central District of California  
23 correctly construed the defendant's 2005 habeas petition as a § 2255  
24 motion and transferred it to this District for resolution. This  
25 Court may not consider the merits of the defendant's § 2255 motion  
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1 unless and until he obtains approval from the Ninth Circuit. 28  
2 U.S.C. § 2244(b)(3). See *United States v. Allen*, 157 F.3d 661, 664  
3 (9th Cir.1998) (moving party's failure to request permission from the  
4 Ninth Circuit to file a successive § 2255 petition means that the  
5 district court lacks jurisdiction over the motion).

6 **IT IS HEREBY ORDERED:**

7 Both the defendant's motion to vacate (**Ct. Rec. 184**) and his  
8 "Notice of Petition for Writ of Mandamus" (**Ct. Rec. 185**) are **denied**  
9 because the Court lacks authority to consider them.

10 **IT IS SO ORDERED.** The District Court Executive is hereby  
11 directed to enter this order and furnish copies to the defendant and  
12 to counsel for the government.

13 **DATED** this 13th day of September, 2005.

14  
15 s/Fred Van Sickle  
16 Fred Van Sickle  
17 Chief United States District Judge  
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